

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Case No. 23-cv-02880-JSC

**ORDER FOLLOWING JUNE 21, 2023
STATUS CONFERENCE**

The Court held a pre-evidentiary hearing status conference on June 21, 2023. This Order confirms the matters discussed.

1. By 5:00 p.m. each day, the parties shall file a statement identifying the witnesses to be called the following day, any exhibits they intend to use with the witness, and, if applicable, where on the docket there is a declaration in support of sealing the witness's testimony or the exhibits to be offered with the witness. To the extent a particular trial exhibit was offered in connection with a prior filing in this matter (such as the motion for preliminary injunction), the parties shall provide a cross-reference to the exhibit and docket number in their filing.
2. For the non-party witnesses whose testimony is being offered via video deposition, the parties shall meet and confer with counsel for the non-parties (Sony, Nintendo, and Nvidia) regarding the non-parties' confidentiality concerns. Given the time constraints raised by these non-parties (Dkt. Nos. 122, 136), this testimony may need to occur out of order.
3. For witnesses whose direct testimony is offered via declaration, the offering party shall provide the Court with a copy of their declaration by 5:00 p.m. the day before the testimony. The declaration shall also be filed on the docket.

4. The Court will convene at 8:15 a.m. each court day in closed session to try to resolve confidentiality issues so the public proceedings are as public as possible. Any non-parties who have a confidentiality objection to the day's proposed testimony/exhibits may appear to argue their objection.
5. The Court will not impose time limits but will be mindful of the parties' estimates for each witness's testimony. The parties shall each have 20 minutes to make opening statements.
6. For the exhibits, the parties shall prepare at least two sets of binders of the exhibits to be used with each witness (one for the Court and one for the witness). The parties shall also upload all of the exhibits on their respective exhibit lists to a secure cloud site and shall email the Courtroom Deputy with a link to access the exhibits (on the cloud site not as a compressed file for download) by 7:00 a.m. on June 22, 2023. The parties shall also email the Courtroom Deputy copies of their exhibit lists in their native format (such that they are searchable and sortable).
7. The FTC's motion for a protective order is denied for the reasons stated on the record; Defendants' proposed protective order shall govern. (Dkt. Nos. 112, 115.) However, the parties shall meet and confer with the non-parties who have raised confidentiality concerns to address their objections by, for example, providing redacted versions of the at-issue exhibits to the identified in-house counsel.
8. The parties shall file redacted versions of their proposed preliminary findings of fact and conclusions of law on the public docket today. The parties shall also email the Courtroom Deputy with a Word version of the unredacted versions of the proposed findings of fact and conclusions of law by 7:00 a.m. June 22, 2023.

This Order disposes of Docket Nos. 112, 122, 136, 148, 150.

IT IS SO ORDERED.

Dated: June 21, 2023


JACQUELINE SCOTT CORLEY
United States District Judge